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Attorney for Plaintiff, JAMES M. KINDER, an individual

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER,

Plaintiff,

v.

HARRAH'S ENTERTAINMENT, Inc.;
HARRAH'S OPERATING COMPANY,
Inc.; HARRAH'S MARKETING
SERVICES CORPORATION; HARRAH'S
LICENSE COMPANY, LLC; HARRAH'S
LAUGHLIN, Inc.; HBR REALTY
COMPANY, Inc. and DOES 1 through 100,
inclusive,

Defendants.

Case No. 07 CV 2132 DMS (AJB)
[Consolidated with 07CV2226 DMS (AJB)]

Judge: Hon. Dana M. Sabraw
Mag. Judge: Hon. Anthony J. Battaglia

**DECLARATION OF CHAD AUSTIN IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

Date: April 25, 2008
Time: 1:30 p.m.
Courtroom: 10

I, CHAD AUSTIN, declare as follows:

1. I am an attorney at law duly licensed and admitted to practice before all courts of the State of California, the United States District Court, Southern District of California and the Ninth Circuit Court of Appeals and have been attorney of record for Plaintiff in this matter since its inception. If called as a witness, I could and would competently testify to all facts within my

1 personal knowledge except where stated on information and belief.

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3 2. I am fully familiar with all of the facts and circumstances surrounding this
4 case. This declaration is submitted in support of Plaintiff's Opposition to Defendants
5 HARRAH'S LICENSE COMPANY, LLC, HARRAH'S LAUGHLIN, Inc. and HBR REALTY
6 COMPANY, Inc.'s Motion to Dismiss. The matters stated in this declaration are true, of my own
7 personal knowledge.
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10 3. Plaintiff has in his possession and I have personally listened to the tape recordings
11 of each and every call (7 in total) made by Defendants to Plaintiff's number assigned to a paging
12 service 619-999-9999, a San Diego, California wireless telephone number.
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15 4. Two (2) of the unlawful prerecorded telemarketing calls complained of in this
16 action, which were made on May 25, 2005 at 2:23 p.m. and November 28, 2005 at 9:43 a.m.,
17 included what clearly appeared to be prerecorded voices. The prerecorded voice messages
18 promoted the Harrah's Laughlin Casino. A true and correct verbatim transcript of those
19 prerecorded messages is attached hereto as Exhibit B.
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22 5. On December 11, 2007, I accessed the FASTweb website, which publishes real
23 estate ownership information relating to properties around the United States. After doing a
24 "Property Profile" of 2900 South Casino Drive, Laughlin, Nevada, I found the document a true
25 and correct copy of which is attached hereto as Exhibit C. That document names the owner of
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1 the property at said address, which is the address for the Harrah's Laughlin Casino in Laughlin,
2 Nevada, as "Harrah's Laughlin, Inc." Also attached hereto and incorporated herein by reference
3 is Exhibit D, a true and correct copy of the website for Harrah's Laughlin Casino, which lists its
4 address as 2900 South Casino Drive, Laughlin, Nevada 89029.
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7 6. One (1) of the unlawful prerecorded telemarketing calls complained of in this
8 action, which was made on December 9, 2003 at 10:19 a.m., was what clearly appeared to be a
9 prerecorded telemarketing call. The prerecorded message stated that it was made on behalf of
10 "Harrah's Rincon Casino," located in Valley Center, San Diego County, California. My
11 investigation has revealed that the Harrah's Rincon Casino is owned by the Rincon band of
12 Mission Indians and operated by one or more of several Harrah's entities, including but not
13 necessarily limited to defendant HARRAH'S ENTERTAINMENT, Inc. (a Delaware
14 corporation), HARRAH'S OPERATING COMPANY, Inc. (a Delaware corporation),
15 HARRAH'S MARKETING SERVICES CORPORATION (a Nevada corporation) and
16 HARRAH'S LICENSE COMPANY, LLC (a Nevada limited liability company). However,
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18 discovery will ultimately be required in order to determine exactly which Harrah's entity operates
19 the Harrah's Rincon Casino. A true and correct verbatim transcript of the December 9, 2003 at
20 10:19 a.m. call is attached hereto as Exhibit E.
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24 7. One (1) of the unlawful prerecorded telemarketing calls complained of in this
25 action, which was made on October 26, 2006 at 2:29 p.m., included what clearly appeared to be a
26 man's prerecorded voice. The prerecorded voice message promoted the Harrah's Council Bluffs
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1 Casino. A true and correct verbatim transcript of that prerecorded message is attached hereto as
2 Exhibit F.

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4 8. On December 17, 2007, I accessed the FASTweb website, which publishes real
5 estate ownership information relating to properties around the United States. After doing a
6 “Property Profile” of 2701 23rd Avenue, Council Bluffs, Iowa, I found the document a true and
7 correct copy of which is attached hereto as Exhibit G. That document lists the owner of the
8 property at said address, which is the address for the Harrah’s Council Bluffs Casino in Council
9 Bluffs, Iowa, as “Hbr Realty Co Inc.” Also attached hereto and incorporated herein by reference
10 is Exhibit H, a true and correct printout of the website for Harrah’s Council Bluffs Casino dated
11 December 17, 2008, which lists its address as 2701 23rd Avenue, Council Bluffs, Iowa.
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15 9. I visited each of the websites for the Harrah’s Casinos at issue in this case
16 (Harrah’s Laughlin Casino, Harrah’s Las Vegas Casino, Harrah’s Rincon Casino, Harrah’s
17 Metropolis Casino and Harrah’s Council Bluffs Casino). Each of those websites lists at the
18 bottom of the page “© 2007 Harrah’s License Company, LLC. All rights reserved.” Therefore, I
19 am informed and believe that Harrah’s License Company, LLC is or may be a necessary party to
20 this action
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24 10. It is absolutely untrue that Plaintiff filed a “Declaration of James M. Kinder in
25 Support of Filing By Vexatious Litigant in” in *James M. Kinder v. Sprint PCS Assets, LLC, et*
26 *al.*, United States District Court, Southern District of California, Case No. 07CV2049 WQH
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1 JMA. No such declaration was filed in that case.

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3 11. It is true that, in some previous TCPA matters, I filed Declarations by my client to
4 support the initial complaint filed therewith. That is because the clerk's office at the San Diego
5 Superior Court ("civil business office") erroneously required same before they would accept a
6 new filing. After jumping through the unnecessary hoop several times, as in *James M. Kinder v.*
7 *Allied Interstate*, San Diego Superior Court Case No. GIC 850543 [suing for violations of the
8 Telephone Consumer Protection Act], which filing was approved by then Presiding Judge Janis
9 Sammartino on February 26, 2007, the civil business office no longer required my client to
10 submit a declaration to be approved by the Presiding Judge. At some point on a date I cannot
11 recall, a clerk with the court stated that the court's in-house legal department had advised them
12 that as long as my client filed through counsel, no approval from the Presiding Judge was
13 necessary. Since then, no such approval has been required by the court in any new filing by Mr.
14 Kinder while he was represented by counsel.
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19 12. The fact that no court approval should have ever been required when my client
20 filed through counsel was ratified by then Presiding Judge Sammartino on June 28, 2007. In
21 *James M. Kinder v. Adecco, Inc.*, San Diego Superior Court Case No. GIC882000, Adecco filed
22 a Notice of Vexatious Litigant, relying on *In re Shieh*, (1993) 17 Cal.App.4th 1154, affecting an
23 automatic stay of that litigation. I timely filed an opposition and Judge Sammartino lifted the
24 stay, holding that the pre-filing order did not apply because Mr. Kinder had filed that action
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1 through counsel and not *In Propria Persona*. A true and correct copy of Judge Sammartino's
2 Order is attached hereto as Exhibit A.
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4 I declare under penalty of perjury under the laws of the State of California and the laws of
5 the United States that the foregoing is true and correct and that this declaration was executed by
6 me on April 11, 2008 in San Diego, California.
7

8 DATED: April 11, 2008

9 By: /s/ Chad Austin
10 CHAD AUSTIN, Esq., Attorney for
11 Plaintiff, JAMES M. KINDER
12 Email: chadaustin@cox.net
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